

REMARKS

Initially, applicant would like to thank the Examiner for the helpful and courteous telephonic interview he conducted with one of applicant's representative in the week of 5 December 2005. During such interview, the merits of the claimed invention relative to the art of record were discussed, although no agreement was reached.

Upon entry of the present amendment, Amendment-E, claims 1-28 remain pending in the present application, of which claims 1, 3, 4, 13 and 14 are independent, and of which claims 27 and 28 are new. Claims 3-12 have been withdrawn from consideration as being drawn to a non-elected invention.

The above-identified Office Action has been reviewed, the references carefully considered, and the Examiner's comments carefully weighed. In view thereof, the present Amendment-E is submitted. It is contended that by the present amendment, all bases of rejection set forth in the Office Action have been traversed and overcome. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Amendments

Claims 1, 3, 4, 13 and 14 have been amended herein to expressly define that the C shape section of the upper inner frame is an open structure.

Applicant respectfully submits that such amendment and new claims are fully supported by the original disclosure, including Figs. 11-18 and the discussion thereof at paragraphs [128] – [155]. Applicant also respectfully submits that these amendments including new claims do not introduce any impermissible “new matter” into the application.

Further, applicant respectfully submits that the above amendment does not raise any new issues for consideration by the Examiner because the open nature of the upper inner frame has

previously been presented in other claims under consideration, e.g., claims 23-24, and has been previously discussed throughout the specification and in an earlier Amendment, as an important aspect of the claimed invention., e.g., it permits the C-shaped upper inner frame to appropriately deform when an occupant bumps against the door, and thereby provide a buffer action to reduce the impact force of such bump.

New claims 27 and 28 define additional aspects of claim 1. Claim 27 defines that the C shape section includes a base portion and the door includes a lining situated facing inwardly of the passenger's space, wherein the base portion of the C shape section is provided along a rear side of the door lining; and claim 28 defines that the C shape section is adapted to deform thereby providing a buffer action property when the passenger bumps against the door inside the vehicle. The limitations of each of these claims 27 and 28 is not taught, suggested nor rendered obvious by the references of record, and is completely different from the teachings of Heim et al. and Odan et al. Therefore, these claims are believed to be in condition for allowance.

Claim Rejections – 35 USC §103

1. At item 1 of the Office Action, the Examiner rejected claims 1, 2, 21 and 24-26 under 35 USC §103(a) as being unpatentable over Heim et al. (US 5,398,453) in view of Odan et al. (US 5,865,496).

Applicant's Response:

Upon careful consideration and in light of the above amendments to claim 1, applicant respectfully submits that the rejection is overcome and that present claims 1, 2, 21 and 24-26 are clearly patentably distinct over the applied references, because: the proposed modification of

Heim et al.'s vehicle door based on a select feature of Odan et al.'s door frame, i.e., an impact bar 11, is improperly based on a suggestion coming entirely from the Examiner (guided by impermissible hind sight of applicant's disclosure), rather than from any teaching or suggestion which may be fairly gleaned from the references themselves; and the references do not otherwise disclose features of the claimed invention such that any hypothetical combination based on the actual teachings of these references fails to achieve or make obvious the claimed invention.

The Proposed Modification of Heim's Door Frame Structure

Regarding the proposed modification, Heim et al.'s door frame includes a substantially horizontal crossbar 7 connected at one end to a forward frame section 2 and at the other end to a rear frame section 3 to form *a horizontal strengthening brace* and to define a lower edge of a window opening 8. The horizontal crossbar 7 is placed in upper portion of the door, and the horizontal cross bar is located adjacent to the supporting frame member 1a. The crossbar is shown as having a *closed* square/rectangular shaped cross section (Figs. 1 and 2).

On the other hand, the impact bar 11 of Odan et al. is provided in front side of door 1 to extend in front-rear direction of a vehicle body. The bar is specifically associated with a relatively large impact load absorbing member 21 formed of foam, and the impact bar 11 is located in the door 1 between an outer panel 3 and glass guides 5, 7 and 8 so that it can absorb the side impact load during a collision by its deformation and *movement toward the inner panel 2* (col.3, lines 10-24). Thus, during the collision, the impact bar 11 of Odan et al. *moves towards* a passenger compartment, which *directly contrary* to the present invention, in which the upper inner frame *moves away* (deforms) from the passenger compartment thereby proving a protective buffer action to a passenger against impact of collision with the door.

Further, Odan et al.'s impact bar 11 includes an outer base 11a of a substantially hat-shaped section which extend in the front/rear direction on the side of an outer panel 3, an inner base 11b of a substantially hat-shaped section which is disposed between the outer base 11a and glass guides 5, 7 and 8 and is secured at the upper and lower edges thereof to the upper and lower edges of the outer base 11a so as to form a *closed section* with the outer base 11a, and a plane base 11c which is disposed between the outer panel 3 and the outer base 11a and is secured at the upper and lower edges thereof to the upper and lower ends of the outer base 11a so as to form a *closed section* with the outer base 11a. Thus, the impact bar 11 of Odan includes *multiple closed sections*. Also, a beltline reinforcement 10 has leg portions connected to the outer panel of the door to define a *closed cross section*. These closed sectioned the impact bar 11 and the beltline reinforcement *teach away* from the claimed invention.

Additional discussion in this regard is presented at pages 12-13 of the supplemental Amendment of 26 October 2005.

Thus, neither of the applied references, either considered singly or in combination provides an upper inner frame having a (open) C-shaped as required by the claimed invention. Correspondingly, applicant respectfully submits that these references provide no motivation for proposed modification.

Applicant respectfully suggests that, in rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. See *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See *In re Lintner*, 458 F.2d 1013, 1016, 173

USPQ 560, 562 (CCPA 1972).

Furthermore, the conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. See *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis, with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), **cert. denied**, 389 U.S. 1057 (1968).

When determining obviousness, "the [E]xaminer can satisfy the burden of showing obviousness of the combination 'only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.'" *In re Lee*, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence." *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

Applicant respectfully suggests that the Examiner may be evaluating applicant's invention using improper hindsight, picking and choosing selected portions of the references and combining those selected portions to reconstruct a mosaic of applicant's invention. Applicant respectfully suggests that such an approach is not consistent with the standards set out in the above-quoted cases of the CAFC.

Features of the Claimed Invention Not Taught by Heim or Odan

Applicant respectfully submits that even if the cited references are combined, for the sake of argument, any combination resulting from the actual disclosures of these references fails to produce applicant's claimed invention for several reasons.

As discussed above, Heim et al.'s crossbar 7 does not have an open C-shaped cross section, but has a *closed* square/rectangular shaped cross section, whereas the impact bar 11 of Odan et al. is associated with a relatively large impact load absorbing member 21 formed of foam, includes multiple closed sections, and is located in the door 1 between an outer panel 3 and glass guides 5, 7 and 8 so that it can absorb the side impact load during a collision by its deformation and *movement toward the inner panel 2* (col.3, lines 10-24), all of which is contrary to the claimed invention.

Thus, the applied references, either considered singly or in combination do not provide or suggest an upper inner frame having a section of C shape, wherein the C shape section is an open structure, as required by amended claim 1. Further, the references do not achieve the desirable advantage of a buffer action as achieved by the claimed invention.

Also, applicant notes that neither the impact bar 11 nor the beltline reinforcement 10 of Odan et al. is indicated to be disposed adjacent to the passenger side of the door, as required by the claimed invention.

Thus, applicant respectfully submits that the Examiner has failed to establish *prima facie* obviousness for rejection of claim 1 under 35 USC 103(a).

For all of the foregoing reasons, applicant requests consideration and withdrawal of the rejection of claims 1, 2, 21 and 24-26 under 35 USC § 103(a).

2. At item 2 of the Office Action, the Examiner rejected claims 13 and 14 under 35 USC §103(a) as being unpatentable over Heim et al. in view of Odan et al.

Applicant's response:

Upon careful consideration and in light of the above amendments, applicant respectfully submits that the rejection is overcome and that present claims 13 and 14 are clearly patentably distinct over the applied references, based on the reasons discussed in relation to claim 1.

Applicant respectfully submits that amended claims 13 and 14 are similar to amended claim 1 and include further limitations. Thus, applicant respectfully disagrees with Examiner's rejection of these claims for those reasons applied to claim 1, hereinabove.

For all of the foregoing reasons, applicant requests consideration and withdrawal of the rejection of claims 13 and 14 under 35 USC § 103(a).

3. At item 3 of the Office Action, the Examiner rejected claims 15-20, 22 and 23 under 35 USC §103 (a) as being unpatentable over Heim et al. in view of Odan et al. as applied to claims 13-14, and further in view of ordinary skill in the art.

Applicant's response:

Upon careful consideration and in light of the above amendments, applicant respectfully submits that the rejection is overcome and that present claims 15-20, 22 and 23 are clearly patentably distinct over the applied references based on the reasons provided in relation to claim 1, and because the Examiner has not established any factual basis to support the obviousness rejection of the additional features set forth in these dependent claims.

In this regard, applicant respectfully submits that a proper factual basis regarding the alleged obviousness of the claimed vehicle door including the features of claims 15-20, 22 and

23 has not been established in view of the references of record or any "ordinary skill in the art". Again, attention is directed to Ex Parte Hamond, 41 USPQ2d 1217, 1220, and In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968)

Based on the foregoing, the rejection of claims 15-20, 22 and 23 based on Heim et al. in view of Odan et al. and in further in view of "ordinary skill in the art" is believed to be overcome, and thus withdrawal of the rejections is respectfully requested.

Additionally, these claims depend from one of independent claims 13 and 14, which are amended to expedite the prosecution of the application.

For all of the foregoing reasons, applicant requests consideration and withdrawal of the rejection of claims 15-20, 22 and 23 under 35 USC § 103(a).

Conclusion

Applicant has overcome the rejections set forth in the Office Action; and moreover, applicant respectfully submits that the invention defined by each of the present claims is clearly, patentably distinct over all of the references of record.

Applicant respectfully submits that this Amendment-E, filed under 37 CFR § 1.114, does not raise any new issues for consideration by the Examiner, but instead merely clarifies existing claim language consistent with prior arguments and the corresponding discussion in the original disclosure.

Therefore, the application is now believed to be in condition for allowance, and a notice to this effect is earnestly solicited.

If the Examiner is not fully convinced of all of the claims now in the application, applicant respectfully requests that the Examiner telephonically contact applicant's undersigned representative to expeditiously resolve prosecution of the application.

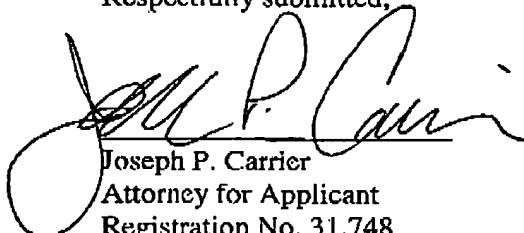
This amendment is filed along with a Request for Continued Examination and a Petition for One-Month Extension of Time under 37 CFR 1.136(a). Applicant respectfully requests, as also requested in the attached RCE, non-entry of previously filed unentered Amendment-D of 9 February 2006.

The Commissioner is hereby authorized to charge \$100.00 for two additional claims in excess of 20, as well as to charge any deficiency which may be required during the entire pendency of the application, and to credit any excess paid during the entire pendency of the application, to Deposit Account 50-0744 in the name of Carrier, Blackman & Associates, P.C.

Favorable consideration is respectfully requested.

Respectfully submitted,

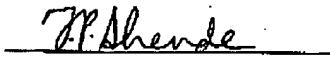
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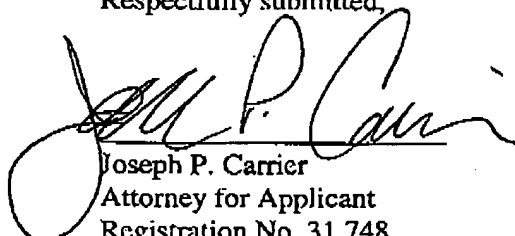
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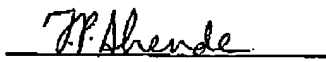
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